IN THE COURT OF APPEALS OF TENNESSEE

FILED
December 7, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

BENNY E. SHOPE and wife, BETTY S. SHOPE, Plaintiffs-Appellants,	) C/A NO. 03A01-9508-CV-00288) BRADLEY COUNTY CIRCUIT COURT
v.	) HONORABLE EARLE G. MURPHY, JUDGE
RADIO SHACK, a division of TANDY CORPORATION, and RADIO SHACK, INC., a corporation doing business in Bradley County, Tennessee, Defendants-Appellees.	)

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CONCURRING OPINION

I concur in the result reached by the majority. I believe it is clear, under ***Eaton v. McClain***, 891 S.W.2d 587, 595 (Tenn. 1994), a post-***McIntyre*** decision of the Supreme Court, that the law in Tennessee is still to the effect that an owner of premises does not have to warn an invitee of a danger that is "open and obvious." I believe the application of this principle, without more, justifies the trial court's grant of a directed verdict in this case. Here, the condition was "open and obvious." Therefore, there was no duty to warn. Since the plaintiffs' case was predicated on the alleged violation of a duty to warn, and since their proof did not demonstrate the existence of that duty, the defendants were entitled to a directed verdict. If there is no duty, there can be no

negligence. ***Doe v. Linder Constr. Co. Inc.***, 845 S.W.2d 173, 178 (Tenn. 1992). I believe that the rationale of this concurring opinion is all that is required to justify affirming the court below. I would go no further.

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Charles D. Susano, Jr., J.